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Consumer Federation of America

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

August 25, 1994

[redacted]

The Honorable Reed Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Chairman Hundt:

We are aware of the efforts by the cable industry to have the FCC sanction an additional 25¢ per channel from consumers as an "incentive" to add new programming to their systems. They claim that the 7.5% profit on additional channels currently permitted is not enough. This latest anti-consumer attempt at an illegitimate rate increase by the cable industry is economically unreasonable and must be rejected by the Commission.

There is no good economic reason for giving an incentive, above a reasonable profit, to cable operators to add new channels. In most cases, it is simply a matter of lighting up dark capacity which can be done at negligible cost and would be more than recovered with a reasonable profit through the Commission's existing formula for adding channels. If cable were a competitive market today, the operators would be rushing to add new programming to their systems in an effort to stay a step ahead of their competitors. Creating an incentive will further distort the non-competitive cable market at the expense of consumers and those companies attempting to enter the market.

CABLE SERVICES BUREAU

A strong argument can be made based on the legislative debate surrounding the Cable Act, that the Commission should refrain from taking any steps to give additional "incentives" to add programming so long as regulated packages of service remain available. If the cable operators really want to stop innovating and adding channels, they will ultimately pay the price in the marketplace. Upstart competitors providing video services over a variety of technologies will have an opening that could spur competition more quickly. Ultimately, the consumer benefits in two ways. First, consumers are assured to receive the same service as they have today at a reasonable price without paying a premium for programming they may not want and they will see lower prices and other benefits of competition arrive sooner.

The cable operators have enlisted programmers in their fight, many of whom share a corporate relationship with the operators, by threatening to close off new and existing outlets for programming. New programmers are likely concerned if the operators maintain an unreasonable posture on this issue and refuse to add new programming, they could suffer in the short term.

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While services could certainly still be launched on a la carte, leased access or as part of a package where a cable operator is acting responsibly, it is likely that operators will continue to use programmers as a means of putting political pressure on the Commission. In the slightly longer term, more competition means more outlets for programmers.

The problems that might be experienced by programmers will be a direct result of the operators' market power. It is inappropriate to reward this type of economically coercive relationship at the expense of this country's cable consumers. When you cut through all the industry rhetoric, this proposal is nothing more than a back door attempt to get around the rate regulation rules.

Aside from the policy reasons for rejecting the cable industry's 25¢ proposal, it is inconsistent with the rate regulation approach taken by the Commission. While surely nobody will say the benchmark formula is perfect, indeed we believe rates are still at least 10% too high, the formula is economically rational. The industry proposes to ignore all of the economic factors that went into creating the benchmark mechanism and just add a quarter per channel. This is an unsound and unreasonable approach.

This approach also creates the perverse incentive to add the cheapest programming possible to maximize the operator's profit. This cheaper programming may also be less desirable to the broad audience that would be forced to pay for it. This proposal would make programming such as home shopping even more desirable because the programmer pays for carriage and the operator gets to keep the 25¢ bonus. This scheme is a very bad deal for consumers.

Creating an incentive to add programming that forces what may be unwanted new programming down the throats of captive cable consumers at a premium price is unconscionable. When Congress voted to pass the Cable Act, the goal was to assure that a reasonably priced package of services would be available across the country. The cable industry proposal threatens this fundamental principle and must be completely rejected. If the goal of the Commission is to put pressure or create incentives for the development of new programming, it should be done in a way that does not stick captive consumers with the bill.

Very truly yours,

Bradley Stillman
Legislative Counsel

cc Commissioner Barrett
Commissioner Chong
Commissioner Ness
Commissioner Quello
Meredith Jones